INDEX

	Page
Opinions below	1
Jurisdiction	2
Question presented	4
Statutes involved	4
Statement	6
Reasons for granting the writ	8
Conclusion	15

CITATIONS

Cases:

Am. Iron Co. v. *Seaboard Air Line*, 233 U. S. 261	12
American Surety Co. v. *Carbon Timber Co.*, 263 Fed. 295	10, 12
Billings v. *United States*, 232 U. S. 261	11
Board of Com'rs of Sweetwater County, Wyo. v. *Bernardin*, 74 F. 2d 809, certiorari denied, 295 U. S. 731	12
Bramwell v. *U. S. Fidelity Co.*, 269 U. S. 483	14
Illinois v. *United States*, 328 U. S. 8	14, 15
Manning v. *Seeley Tube & Box Co.*, 338 U. S. 561	11
Massachusetts v. *United States*, 333 U. S. 611	15
Mothershead v. *United States Fidelity & Guaranty Co.*, 22 F. 2d 644, certiorari denied, 276 U. S. 637	10, 12
New York v. *Saper*, 336 U. S. 328	12, 13, 15
Pearsall v. *Central Oil & Gas Co.*, 23 F. 2d 716	10, 12
Pennsylvania Steel Co. v. *New York City Ry. Co.*, 216 Fed. 458	12
Powell v. *Link*, 114 F. 2d 550	11
Price v. *United States*, 269 U. S. 492	14
Richmond & I. Const. Co. v. *Richmond, N., I. & B. R. Co.*, 68 Fed. 105	11, 12
Rodgers v. *United States*, 332 U. S. 371	11
Sawyer Tanning Co. v. *C. J. O'Keefe Shoe Co.*, 23 F. 2d 717	10, 12
Spokane County v. *United States*, 279 U. S. 80	11
Spring Coal Co. v. *Keech*, 239 Fed. 48	12
Thomas v. *Western Car Co.*, 149 U. S. 95	12
United States v. *Emory*, 314 U. S. 423	2, 10, 14, 15
United States v. *Knott*, 298 U. S. 544	2
United States v. *Remund*, 330 U. S. 539	2, 15
United States v. *State Bank of North Carolina*, 6 Pet. 29	14
United States v. *Texas*, 314 U. S. 480	2
United States v. *Waddill Co.*, 323 U. S. 353	2

Statutes:

	Page
Act of March 3, 1797, c. 20, 1 Stat. 512, 515, Sec. 5	14
Act of May 27, 1926, c. 406, 44 Stat. 662	13
Bankruptcy Act of 1898, c. 541, 30 Stat. 544, as amended by the Chandler Act of June 22, 1938, c. 575, 52 Stat. 840	13
Internal Revenue Code:	
Sec. 1420 (26 U.S.C. 1946 ed., Sec. 1420)	4, 11
Sec. 1627 (26 U.S.C. 1946 ed., Sec. 1627)	4, 11
Revised Statutes:	
Sec. 3466 (31 U.S.C. 1946 ed., Sec. 191)	2, 5, 10, 11, 13, 14
Sec. 3467 (31 U.S.C. 1946 ed., Sec. 192)	5

In the Supreme Court of the United States

OCTOBER TERM, 1951

No. 100

UNITED STATES OF AMERICA, PETITIONER

v.

HAROLD BLOOM, GENERAL ASSIGNEE FOR THE BENEFIT OF CREDITORS OF PAVONE TEXTILE CORP.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

The Solicitor General, on behalf of the United States, prays that a writ of certiorari issue to review the judgment of the Court of Appeals of the State of New York, entered in this case on March 9, 1951.

OPINIONS BELOW

The opinion of the New York Supreme Court, Special Term, New York County (R. 16-18), is reported in 195 Misc. 702. The opinion of the New York Supreme Court, Appellate Division, First Department (R. 22-24), is reported in 276 App.

Div. 596. The opinion of the Court of Appeals of the State of New York (R. 25-27), is reported in 302 N. Y. 206.

JURISDICTION

The judgment of the Court of Appeals was entered on March 9, 1951 (R. 27-28). The jurisdiction of this Court is invoked under 28 U. S. C., Section 1257 (3), on the ground that the decision below denies a title, right, privilege or immunity claimed by the United States under Section 3466 of the Revised Statutes of the United States. The cases relied upon to sustain the jurisdiction of this Court are *United States* v. *Knott*, 298 U. S. 544; *United States* v. *Emory*, 314 U. S. 423; *United States* v. *Texas*, 314 U. S. 480; *United States* v. *Waddill Co.*, 323 U. S. 353; and *United States* v. *Remund*, 330 U. S. 539.

In a general assignment proceeding for the benefit of creditors, the court below held that Section 3466 of the Revised Statutes did not require, as comprehended in the priority conferred upon the United States, allowance of post-assignment interest on tax claims of the United States to the date of payment of such claims (R. 25-26). The United States asserted by affidavit and urged on argument before the New York Supreme Court at Special Term, New York County, its right under Section 3466 of the Revised Statutes to payment of post-assignment interest as included in the priority granted under that statute, by way of objection to

settlement and allowance of the final account of the assignee and to confirmation of the report of the referee designated in the assignment proceeding to take and state the account of the assignee (R. 2, 7, 20). The court at Special Term refused to allow interest to the United States subsequent to the date of the filing of the general assignment (R. 12-14). On appeal to the Appellate Division of the New York Supreme Court, First Department, the United States made the same contention in brief and argument. The Appellate Division sustained the contention of the United States on the basis of Section 3466 of the Revised Statutes; held that the cited federal statute compelled allowance of post-assignment interest on the tax claims of the United States (R. 22-23); and reversed the order of Special Term on the law (R. 22).

On appeal by the assignee to the Court of Appeals of the State of New York, the same contention, based on Section 3466 of the Revised Statutes, was made by the United States in brief and on oral argument. The Court of Appeals, however, rejected this contention and in its opinion held that, while Section 3466 of the Revised Statutes applied to the proceedings (R. 25-26), the priority granted by Congress does not include post-assignment interest (R. 26). The judgment of the Court of Appeals reversed the Appellate Division and affirmed the order of Special Term (R. 27-30). The court below thus passed upon the federal question

adversely to the contention of the United States and denied the right claimed under the federal statute.

The question presented is one of substance, as is more fully developed under the reasons for granting the writ (pp. 8-15, *infra*).

QUESTION PRESENTED

Whether, in general assignment proceedings for the benefit of creditors, Section 3466 of the Revised Statutes entitles the United States to priority in the payment of interest on its tax claims for the period from the date of the filing of the assignment until the taxes are paid.

STATUTES INVOLVED

Internal Revenue Code:

> SEC. 1420. COLLECTION AND PAYMENT OF TAXES.
>
> * * * * *
>
> (b) *Addition to Tax in Case of Delinquency.*—If the tax is not paid when due, there shall be added as part of the tax interest (except in the case of adjustments made in accordance with the provisions of sections 1401 (c) and 1411) at the rate of 6 per centum per annum from the date the tax became due until paid.
>
> * * * * *

(26 U.S.C. 1946 ed., Sec. 1420.)

> SEC. 1627. [As added by Sec. 2 (a), Current Tax Payment Act of 1943, c. 120, 57 Stat.

126]. OTHER LAWS APPLICABLE.

All provisions of law, including penalties, applicable with respect to the tax imposed by section 1400 shall, insofar as applicable and not inconsistent with the provisions of this subchapter, be applicable with respect to the tax under this subchapter.

(26 U.S.C. 1946 ed., Sec. 1627.)

Revised Statutes:

SEC. 3466. Whenever any person indebted to the United States is insolvent, or whenever the estate of any deceased debtor, in the hands of the executors or administrators, is insufficient to pay all the debts due from the deceased, the debts due to the United States shall be first satisfied; and the priority hereby established shall extend as well to cases in which a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed, or absent debtor are attached by process of law, as to cases in which an act of bankruptcy is committed.

(31 U.S.C. 1946 ed., Sec. 191.)

SEC. 3467 [As amended by Sec. 518(a) of the Revenue Act of 1934, c. 277, 48 Stat. 680]. Every executor, administrator, or assignee, or other person, who pays, in whole or in part, any debt due by the person or estate for whom or for which he acts before he satisfies and

> pays the debts due to the United States from such person or estate, shall become answerable in his own person and estate to the extent of such payments for the debts so due to the United States, or for so much thereof as may remain due and unpaid.

(31 U.S.C. 1946 ed., Sec. 192.)

STATEMENT

The facts were stipulated and are not in dispute (R. 3, 4-8, 22). Pavone Textile Corp. executed an assignment to Harold Bloom for the benefit of creditors on April 26, 1948, which was filed in the office of the clerk of the county of New York on May 17, 1948 (R. 2, 4). The United States duly filed a claim with the assignee for social security and withholding taxes in the sum of $2,345.34, inclusive of penalties and interest, to September 30, 1948 (R. 4). The proof of claim contained a demand for payment of interest to date of payment (R. 2). The claim inclusive of penalties and interest up to the date of filing of the assignment amounted to $2,302.81, and that sum, pursuant to order made at Special Term of the New York Supreme Court, dated August 2, 1949, has been paid (R. 4, 13).

Previously, on April 1, 1949, the state court had made an order appointing a referee to take and state the final and supplemental accounts of the assignee, hear any and all objections thereto and take proof of all services rendered (R. 5). In

his report the referee denied to the United States post-assignment interest on its tax claims (R. 5-7). Thereafter the assignee moved at Special Term to confirm the referee's report, to settle and allow his final account and to direct the distribution of assets (R. 7, 12). The United States filed objections to that part of the referee's report which denied post-assignment interest on its tax claims, but the New York Supreme Court at Special Term overruled its objection and confirmed the report in all respects (R. 7, 13-14). Although the opinion at Special Term (R. 16-18) does not specifically refer to Section 3466 of the Revised Statutes, the United States, in making its objection, expressly invoked this statute and based its contention upon the priority right there conferred by Congress.[1] In the order entered at Special Term on August 2, 1949, the assignee was directed to retain a reserve fund in the amount of $413.44, pending the prosecution of any appeal by the United States, as interest on the tax claims of the United States

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[1] In the filed affidavit of objection submitted by Clark S. Ryan, Assistant United States Attorney (R. 12), which is not included in the printed record on appeal, the following statement appears:

> 31 U.S.C. Section 191, provides that "the debts due to the United States shall be first satisfied". This section is to be liberally interpreted so as to protect the Government revenue. *United States* v. *Emory*, 314 U.S. 423 (1941). In the light of these statutes and decisions, it is clear that the Referee's report is in error in so far as it denies interest after the date of the General Assignment.

from May 17, 1948 (the filing date of the assignment), until June 30, 1951 (R. 14). On appeal by the United States from so much of the order of Special Term as directed payment of interest on its tax claim only to the date of the filing of the assignment (R. 10) the Appellate Division of the State Supreme Court, First Department, on April 25, 1950, reversed on the law and held that Section 3466 of the Revised Statutes compels allowance of post-assignment interest on the claims of the United States (R. 21-24). However, on the assignee's appeal, the Court of Appeals of the State of New York, on March 9, 1951, reversed the Appellate Division and affirmed the order of Special Term (R. 27-28), holding that Revised Statutes, Section 3466, does not entitle the United Statutes to post-assignment interest [2] (R. 25-27).

REASONS FOR GRANTING THE WRIT

1. This case presents a question of continuing administrative importance in the functioning of the tax laws. The issue involved arises *inter alia*, whenever a taxpayer being insolvent makes a voluntary assignment for the benefit of creditors or a receiver is appointed to distribute an estate in a nonbankruptcy proceeding. The records of the office of the Chief Counsel, Bureau of Internal Revenue, indicate that there are currently pending

[2] The Appellate Division and the Court of Appeals also passed on claims of the State of New York to post-assignment interest (R. 23, 26-27), which, however, being set up under state statutes, are not here relevant.

approximately 810 cases involving assignments for the benefit of creditors, of which about 362 are in the State of New York, and in which the amount of interest approximates $430,000, computed from the respective dates of assignment.[3] A survey conducted by the same office shows that there are 985 pending receivership cases in state and federal courts involving federal tax claims upon which the estimated interest to May 31, 1951, exceeds $7,000,000.[4] All of this interest has accrued subsequent to receivership and none of the proceedings are in bankruptcy or brought under any chapter of the Bankruptcy Act, as amended. We are further informed by the Treasury Department that the number of pending cases and the amount of interest involved continue substantially constant from year to year.

Moreover, this question appears certain to arise in the courts of substantially every one of the forty-eight states, as well as in numerous federal courts, and, while in the aggregate the tax money involved is huge, in individual cases it may be very small.

The following cases, decided by federal courts in nonbankruptcy insolvency proceedings, in which interest was allowed to date of payment of claims,

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[3] Letter from Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, to Assistant Attorney General Caudle, dated May 22, 1951.

[4] Letter from Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, to Assistant Attorney General Caudle, dated May 25, 1951.

pursuant to the priority conferred by Section 3466 of the Revised Statutes (p. 5, *supra*) conflict with the decision of the state court below. *American Surety Co.* v. *Carbon Timber Co.*, 263 Fed. 295, 302 (C. A. 8th) (assignment proceeding for the benefit of creditors); *Mothershead* v. *United States Fidelity & Guaranty Co.*, 22 F. 2d 644, 654 (C.A. 8), certiorari denied, 276 U. S. 637; *Pearsall* v. *Central Oil & Gas Co.*, 23 F. 2d 716 (W. D. Pa.); *Sawyer Tanning Co.* v. *C. J. O'Keefe Shoe Co.*, 23 F. 2d 717 (D. Mass.).

Moreover, as discussed below (pp. 14-15), the holding of the court below (R. 26) conflicts with the ruling of this Court in *United States* v. *Emory*, 314 U. S. 423, that the Bankruptcy Act was not intended to eliminate either partially or wholly the statutory priority conferred by Section 3466 upon claims of the United States in nonbankruptcy proceedings.

Hence, to avoid inequality and unnecessary litigation expense, it becomes a matter of considerable practical importance in the administration of the revenue laws and of Section 3466 of the Revised Statutes, *supra*, p. 5, both from the viewpoint of the taxpayers and the Government, that the question here involved be settled by the Supreme Court.

2. In tax cases, interest allowance to the Government rests "on the basic necessity of the Government to collect a carefully estimated sum of

money by a particular date in order to meet its anticipated expenditures" (*Rodgers* v. *United States*, 332 U. S. 371, 374), and is granted even in the absence of statutory provision therefor (*Billings* v. *United States*, 232 U. S. 261). Interest is not to be denied unless Congress has specifically so provided (*Manning* v. *Seeley Tube & Box Co.*, 338 U. S. 561). On the contrary, Congress has directed by the relevant taxing acts that interest shall be added "as part of the tax" from the date the tax becomes due "until paid." Internal Revenue Code, Sections 1420 (b), and 1627 (pp. 4-5, *supra*). Even without this express mandate of the taxing act, the interest is just as much a part of the debt claimed as the principal thereof. *Richmond & I. Const. Co.* v. *Richmond, N., I. & B. R. Co.*, 68 Fed. 105, 116 (C. A. 6); *Powell* v. *Link*, 114 F. 2d 550, 552-554 (C. A. 4). Thus, here interest is an integral part of the "debts due to the United States," for which Congress commands priority against estates which have been made subject to voluntary assignments (R. S. Sec. 3466, p. 5, *supra*). Clearly no state law may abridge a tax liability due the United States established by Congress, nor may any state law deny priority to any part of a debt due the United States from an insolvent, for which Congress specifically directs first payment. *Spokane County* v. *United States*, 279 U. S. 80.

The general rule applied by the federal courts in receivership and assignment proceedings, even

as to non-governmental debts, allows interest on priority debts to time of payment if they can be paid in full, notwithstanding that what remains is not sufficient to pay claims of a lower rank in full. *Am. Iron Co.* v. *Seaboard Air Line*, 233 U. S. 261, 266-267, and cases there cited; *Pennsylvania Steel Co.* v. *New York City Ry. Co.*, 216 Fed. 458, 471-472 (C. A. 2); *Spring Coal Co.* v. *Keech*, 239 Fed. 48 (C.A. 4); *American Surety Co.* v. *Carbon Timber Co.*, 263 Fed. 295, 302 (C.A. 8); *Mothershead* v. *United States Fidelity & Guaranty Co.*, 22 F. 2d 644, 654 (C.A. 8), certiorari denied, 276 U.S. 637; *Pearsall* v. *Central Oil & Gas Co.*, 23 F. 2d 716 (W.D. Pa.); *Sawyer Tanning Co.* v. *C. J. O'Keefe Shoe Co.*, 23 F. 2d 717 (Mass.); *Board of Com'rs of Sweetwater County, Wyo.* v. *Bernardin*, 74 F. 2d 809, 814-815 (C.A. 10), certiorari denied, 295 U.S. 731.[5]

Reliance by the state court (R. 25-26) upon *New York* v. *Saper*, 336 U.S. 328, is not well taken. Indeed, the reasoning of the *Saper* case supports the Government's contention here rather than the holding of the court below. There, this Court held that the 1926 amendment (Act of

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[5] Notwithstanding its citation by the court below as supporting a contrary rule (R. 25), *Thomas* v. *Western Car Co.*, 149 U.S. 95, 116-117, has not generally been so understood. *American Iron Co.* v. *Seaboard Air Line*, *supra*, p. 267; *Richmond & I. Const. Co.* v. *Richmond, N., I. & B. R. Co.*, *supra*, pp. 115-116, cited by this Court in the *American Iron Co.* case; *Pennsylvania Steel Co.* v. *New York City Ry. Co.*, *supra*, pp. 471-472; *American Surety Co.* v. *Carbon Timber Co.*, *supra*, pp. 302-303.

May 27, 1926, c. 406, 44 Stat. 662) and the Chandler Act amendments (Act of June 22, 1938, c. 575, 52 Stat. 840), to the Bankruptcy Act, manifested an intent by Congress to assimilate taxes to other debts in bankruptcy proceedings, and so to deny them, also, post-bankruptcy interest (pp. 337, 340, fn. 18). On the other hand, as discussed in the *Saper* opinion (pp. 333-335), the Bankruptcy Act, before these amendments, was for many years construed not to intend an exception to the general rule nor to negative allowance of interest on tax claims until paid. It follows that since, in assignment proceedings, as distinguished from bankruptcy proceedings after the amendments above referred to, Congress has not manifested an intent to limit the specific long-standing statutory priority of the United States, that priority still stands and post-assignment interest continues to be payable.

Hence, it by no means follows, as the court below suggests (R. 26), that Section 3466

> clearly extends the Federal priority in bankruptcy proceedings to assignment proceedings, and, inasmuch as the priority in bankruptcy does not include post-bankruptcy interest, *City of New York* v. *Saper, supra,* so the priority in assignment proceedings does not include post-assignment interest.

On the contrary, while Section 3466 enumerates the events (including an act of bankruptcy) which

shall provide the foundation for the existence of priority, it does not, by its terms or import, limit the scope of the priorities therein granted to those provided in the Bankruptcy Act, either in its original form or as amended. *Bramwell* v. *United States Fidelity Co.*, 269 U. S. 483, 489-490). Unless the insolvent estate is administered under the Bankruptcy Act, this Court has held, directly contrary to the quoted ruling of the court below, the provisions of the Bankruptcy Act do not extend to, nor affect, the priority conferred by Section 3466, for the Bankruptcy Act was not intended to eliminate either partially or wholly the priority of claims of the United States in nonbankruptcy proceedings. *United States* v. *Emory*, 314 U. S. 423, 427-429. The purpose of Section 3466 is to secure adequate public revenues to sustain the public burden, and it is to be liberally construed in order to effectuate that purpose. *United States* v. *State Bank of North Carolina*, 6 Pet. 29, 35; *Bramwell* v. *U. S. Fidelity Co., supra*, p. 487; *United States* v. *Emory, supra*, p. 426. These provisions have been in force since 1797 without significant modification (Act of March 3, 1797, c. 20, 1 Stat. 512, 515, Sec. 5; *United States* v. *Emory, supra*, p. 428), and, indeed, derive from earlier statutes enacted for the collection of taxes (*Price* v. *United States*, 269 U. S. 492, 500-501).

Section 3466 provides an important means for the collection of federal taxes (*Illinois* v. *United*

States, 328 U. S. 8), and must be applied, as here, where not inconsistent with other expressions of congressional intention. Indeed (*United States* v. *Emory, supra,* p. 433)—

> Only the plainest inconsistency would warrant our finding an implied exception to the operation of so clear a command as that of § 3466.

Illinois v. *United States, supra,* pp. 11-12; *United States* v. *Remund,* 330 U. S. 539, 544-545; *Massachusetts* v. *United States,* 333 U. S. 611.

Since under Section 3466 federal indebtedness enjoys a priority status entirely different from all other claims, the reasons of practical convenience stopping interest on ordinary claims do not apply. See *New York* v. *Saper, supra,* pp. 333-334. If inequity exists through allowing interest during the period the fund is in custody of the courts, the argument must be addressed to Congress and not to the courts. *United States* v. *Emory, supra,* p. 431.

CONCLUSION

For the foregoing reasons this petition for a writ of certiorari should be granted.

Respectfully submitted,

PHILIP B. PERLMAN,
Solicitor General.

JUNE 1951.

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